

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANDREAS PEFANIS on behalf of himself :  
and others similarly situated, :

Plaintiff, :

-v- :

WESTWAY DINER, INC., :

Defendant. :  
-----X

08 Civ. 002 (DLC)

ORDER

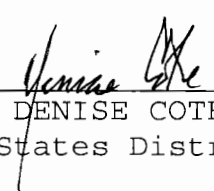
DENISE COTE, District Judge:

In an Order dated August 7, 2009, the Court granted plaintiff's motion for class certification. On October 1, 2009, plaintiff submitted a proposed class action notice and exclusion request form (the "Notice"). Following an October 13, 2009 teleconference held on the record, plaintiff submitted a revised Notice. On October 16, 2009, defendant submitted proposed revisions to the Notice. The Court reviewed both parties' submissions and made further revisions to the Notice. The revised Notice is attached to this Order. It is hereby

ORDERED that the parties shall submit to the Court any objections or comments on the revised Notice by **October 23, 2009**.

SO ORDERED:

Dated: New York, New York  
October 21, 2009

  
\_\_\_\_\_  
DENISE COTE  
United States District Judge

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
ANDREAS PEFANIS on behalf of himself and others  
similarly situated,

Plaintiff,

-v-

WESTWAY DINER, INC.,

Defendant.  
----- X

08 Civ. 002 (DLC)

**NOTICE OF PENDENCY  
OF CLASS ACTION  
LAWSUIT  
REGARDING WAGES**

**IF YOU ARE OR WERE EMPLOYED AT WESTWAY DINER AS A  
SERVICE EMPLOYEE, INCLUDING KITCHEN STAFF, SERVER,  
BUSSER, OR RUNNER, AT ANY TIME SINCE JANUARY 2, 2002,  
PLEASE READ THIS NOTICE.**

*A court authorized this Notice. This is not a solicitation from a lawyer.*

- A former Westway Diner (“Westway”) service employee (“Plaintiff”) has sued Westway claiming that Westway failed to pay him for all the hours that he worked, including overtime; failed to pay him an extra hour’s pay at the New York minimum wage for workdays on which he worked longer than ten hours; and made unlawful deductions from his pay.
- The Plaintiff has brought this lawsuit on his own behalf and on behalf of all service employees who worked at Westway since January 2, 2002 to the present, including all kitchen staff, servers, bussers, and runners (the “Class”).
- Plaintiff seeks to recover from Westway unpaid wages, disgorgement of the improper deductions, interest, and injunctive relief to stop these practices in the future. Plaintiff also seeks from Westway recovery of costs, interest, and attorneys’ fees.
- Westway denies that the Plaintiff’s claims have merit and has asserted various defenses against those claims.
- The Court has allowed this lawsuit to proceed as a class action lawsuit under the New York State Labor Law.
- In a class action lawsuit, one or more people called the “Class Representative” sue on behalf of other people who have similar claims, called the “Class.” Class members are

automatically included in the case unless they choose to exclude themselves, in writing, from the Class.

- The Honorable Denise Cote, United States District Judge for the Southern District of New York, is overseeing this lawsuit. This class action lawsuit is known as Pefanis v. Westway Diner, Inc., Case No. 08-CV-002. This Notice is not an expression by the Court of any opinion as to the merits of any claims or defenses by either party to this lawsuit.
- The purpose of this Notice is to advise you of the pendency of this class action lawsuit and of certain rights you may have with respect to this lawsuit.

## **YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

### **1. Remain in the lawsuit**

If you do nothing in response to this Notice, you will remain a member of the Class. This may allow you to get money or other benefits that may come from a trial or settlement of this class action lawsuit.

By remaining a member of the Class, however, you give up the right to sue Westway separately under the New York Labor Law. You will be legally bound by all of the orders that the Court issues and judgments that the Court enters in this class action lawsuit. Regardless of whether the Plaintiff wins or loses this lawsuit, you will not be able to sue Westway in a separate action under the New York State Labor Law for the claims alleged in this case.

If you remain in this lawsuit and the Plaintiff succeeds in proving the claims against Westway, and if money or other benefits are obtained from Westway, you will be notified about how to ask for a share of the money or other benefits.

### **2. Ask to be excluded from the lawsuit**

If you ask to be excluded from this class action lawsuit, you will retain the right to sue Westway separately and on your own behalf.

If you are excluded, you will not be entitled to a share in any money or other benefits that the Class may obtain from Westway from either a trial or a settlement in this lawsuit.

If you wish to request exclusion from the Class, you must read, sign and return the enclosed Exclusion Request form by **[date]** to:

**D. Maimon Kirschenbaum  
Joseph, Herzfeld, Hester & Kirschenbaum LLP  
757 Third Avenue, 25<sup>th</sup> Floor  
New York, NY 10017**

The form must be postmarked by **[45 days from the date of the Notice]**.

If you exclude yourself from this class action lawsuit in order to start or continue your own lawsuit against Westway, you should talk to your own lawyer soon because your claims may be subject to a statute of limitations.

## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

Westway's records indicate that you have worked for Westway as a service employee, such as a member of the kitchen staff, a server, a busser, or a runner, at sometime since January 2, 2002.

### **2. I'm not sure if I am included in the Class?**

If you are not sure whether you are included in the Class, you can get free help by calling or writing Class Counsel, Joseph, Herzfeld, Hester & Kirschenbaum LLP, at the telephone number or address listed on the last page of this Notice.

### **3. Can Westway fire me or take any other action against me because I am a part of this lawsuit?**

No. New York law prohibits Westway from discharging or in any other manner retaliating or discriminating against you for joining this lawsuit.

## **THE LAWYERS REPRESENTING THE CLASS**

### **4. Do I have a lawyer in this case?**

The law firm of Joseph, Herzfeld, Hester & Kirschenbaum LLP is representing you and all Class members and has been designated "Class Counsel" in this lawsuit. You can obtain more information about Joseph, Herzfeld, Hester & Kirschenbaum LLP by visiting <http://www.jhllp.com>, or by calling or writing them at the telephone number or address listed on the last page of this Notice.

**5. Should I get my own attorney?**

If you choose to remain in the Class, you do not need to hire your own attorney because Class Counsel will represent you and all other Class members. If you retain your own attorney, you must pay that attorney's fees and expenses.

**6. How will the lawyers be paid?**

As Class Counsel, Joseph, Herzfeld, Hester & Kirschenbaum LLP is handling this matter on a contingency basis. If the Plaintiff prevails on his claims against Westway, Class Counsel will make an application to the Court for the recovery of fees and costs. The Court has discretion on the amount of fees to award to Class Counsel. The fees may be as much as 33% of any settlement fund or judgment after the deduction of costs and expenses.

**TO GET MORE INFORMATION**

You can obtain more information about this lawsuit by visiting Class Counsel's website, <http://www.jhllp.com>, or by contacting Class Counsel:

**D. Maimon Kirschenbaum**  
**Joseph, Herzfeld, Hester & Kirschenbaum LLP**  
**757 Third Avenue, 25<sup>th</sup> Floor**  
**New York, NY 10017**  
**Tel: 212-688-5640**  
**Fax: 212-688-2548**  
**<http://www.jhllp.com>**  
**E-mail: [info@jhllp.com](mailto:info@jhllp.com)**

**EXCLUSION REQUEST FORM**

I hereby request to be excluded from this class action lawsuit for unpaid wages known as Pefanis v. Westway Diner, Inc., Case No. 08-CV-002. I understand that by excluding myself, I will not get any money or other benefits that may come from a trial or settlement of this lawsuit. However, I will not be bound by any of the Court's orders or judgments in this class action lawsuit. I will also keep any rights that I may have to sue Westway Diner, Inc. in a separate lawsuit for unpaid wages and benefits.

\_\_\_\_\_  
Full Legal Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

If you want to be excluded, mail this form, postmarked by **[45 days from the mailing of notice]** to:

**D. Maimon Kirschenbaum  
Joseph, Herzfeld, Hester & Kirschenbaum LLP  
757 Third Avenue, 25<sup>th</sup> Floor  
New York, NY 10017**

**DO NOT MAIL THIS FORM IF YOU WANT TO STAY IN THE CLASS.**